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United States of America

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

No. 634

KENNETH M. KEEFE and WALLACE D. BRADFORD,
Petitioners and Appellants,
vs.
EARL L. CLARK, Drain Commissioner of Oakland County, Michigan, and
BOARD OF SUPERVISORS OF OAKLAND COUNTY,
Respondents and Appellees,
CITY OF ROYAL OAK, Intervenor

REPLY TO "SUPPLEMENTAL CITATIONS FOR APPELLEES"

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REPLY TO "SUPPLEMENTAL CITATIONS FOR APPELLEES"

A document prepared by counsel for Appellees entitled "Supplemental Citations for Appellees" has been received. As this contains considerable argumentative material, we believe that we should be entitled to answer the same, and that it would be helpful to the court to know our views.

The question is raised as to whether it was necessary for the lower court to consider Acts 114 and 155, Michigan Public Acts 1937, and appellees argue that prior to these enactments the law was such that the lower court would have been correct in arriving at the conclusion which it reached, without any reference to the 1937 legislation. In other words, appellants say that if, under the laws existing when the bonds were issued, a parcel of land was acquired by the state through forfeiture as a result of tax delinquency, it would after return to private ownership be exempt from future deficiency drain assessment.

We do not believe that any of the cases cited by appellees sustain that proposition.

Auditor General v. Clifford, 143 Mich. 626, does not present a question of land becoming exempt from newly levied taxes. A party who had bought land from the state when the record showed that prior taxes had been cancelled because of errors was protected against a subsequent imposition of the same taxes on the ground that the auditor general was estopped by his record. Nothing said by the court indicates a view that the purchaser's title was not subject to such taxes as might in the future be levied under any applicable law.

Krench v. State of Mich., 277 Mich. 168, merely holds that when the state conveys a title it may reserve mineral rights. This is merely a recognition of the right of any owner of land to reserve from any grant such interests as he wishes. The state, however, cannot as an incident to the grant of land make it exempt from taxes. That was forbidden by the State Constitution, Section 9, Article X (cited R. 42) providing "The power of taxation shall never be surrendered or suspended by any grant or contract to which the state or any municipal corporation shall be a party."

Meltzer v. State Land Office Board, 301 Mich. 541, merely holds that a new chain of title starts after the state acquires title, and that a former owner has nothing to convey after he has lost title. It does not hold that a drain commissioner is prevented by the deed from the state from levying a deficiency drain assessment against the land after it has gone into private ownership.

Lindsay v. Eastwood, 72 Mich. 336, holds that the lien for a drain assessment becomes fixed when the commissioner makes the assessment and not when it is placed on the tax rolls for collection. *Jacobs v. Union Trust Co.*, 155 Mich. 223, is opposed to appellees' theory for it holds that there is no lien until the amount of the tax or assessment is ascertained and has become a charge which may be discharged by payment. Since there never has been a deficiency assessment, and no way of knowing what it would be if levied, there never has been a lien created for it, which could be discharged by payment.

We agree that the original assessment for $300,000 became a lien prior to the issuance of the bonds, but that is not the same as saying that there was a lien for anything except the amount specified in the original assessment roll as against each parcel. It is therefore inaccurate for appellees to say, as they do on page 7 of their memorandum, "that the lien for the entire cost, in the percentages fixed, attached in 1927." The cost of a drain is not a lien without action being taken by the officers in making the assessment. The original lien may be extinguished by acquisition by the state, but that only does away with the lien for that assessment. If a deficiency levy is made, the lien for it dates from the making of such levy and not from the date of the existence of the drain district debt. We are not concerned here with the deferred installments of the original levy, since there is no claim here that any of such

deferred installments should be imposed upon the scavenger sale lands. The deficiency levy is not a deferred installment of the original levy, but an entirely new levy.

Dawson v. Aurelius Twp., 49 Mich. 479, and *Cooper v. Little*, 220 Mich. 62, have no bearing on this case. We do not claim that any township is responsible for this debt, except to the extent that two townships are assessed for a portion of the cost of the drain, and are subject to deficiency assessments as the law provides. The cases really support our statement that the drain district is a separate entity, and is not merely an assessment district created by some other municipal corporation, as was the situation in *Municipal Investors Assn. v. Birmingham*, 298 Mich. 314.

Appellees make no mention of the language of the statutes as they existed prior to 1937 relating to disposition of lands forfeited to the state, which we believe clearly negatives the view that land could by mere acquisition by the state become exempt from a deficiency assessment, after its return to private ownership. The opening sentence of Sec. 3524 C. L. 1929, Sec. 7.185 M. S. A., quoted p. 18 of our Amplification of Appendix to Appellants' First Brief, shows that the only taxes cancelled when the state acquired title were those charged in the office of the auditor general at the time the lands were deeded to the state. As the only taxes which can be charged in his office are those which have become delinquent and as no deficiency levy has yet been made, it could not be cancelled. *Case v. City of Saginaw*, 196 Mich. 687. Nor do they note Sec. 3529 C. L. 1929, Sec. 7.192 M. S. A., appearing p. 25 of our amplification, which says that after state tax lands are conveyed "they shall thereafter be assessed to such owner or occupant as other lands are assessed for all purposes." We fail to see how the legislature could have more clearly manifested an intent to avoid any implication that the

state's deed should create any exempt status whatsoever. Such lands were not to be treated in any way different than if they had never been owned by the state. By giving effect to this language the statute is in harmony with the general exemption laws appearing in the appendix to our first brief, p. 30, which forbid exemptions by implication.

These statutory provisions in the general tax law cannot be ignored in passing on the question of whether it was necessary for the lower court to consider the 1937 legislation in arriving at its conclusion. As the law existed when the bonds were issued no exempt status resulted from forfeiture by the state and subsequent resale to a private party.

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